



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on Natural Resources and
Transportation...**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Natural Resources and Transportation

Clearinghouse Rule 05-034

Relating to CDL occupational licenses.

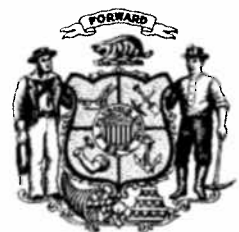
Submitted by Department of Transportation.

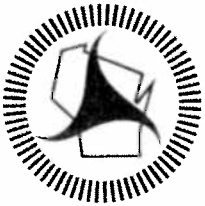
June 14, 2005	Referred to Committee on Natural Resources and Transportation.
July 14, 2005	No action taken.

Matt Phillips
Committee Clerk



WISCONSIN STATE LEGISLATURE





Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

The Honorable Senator Neal Kedzie
Chairman, Senate Transportation Committee
Room 313 South
State Capitol
Madison, Wisconsin 53707

June 10, 2005

The Honorable Representative John Ainsworth
Chairman, Assembly Transportation Committee
Room 309 North, State Capitol
Madison, Wisconsin 53702

RE: Proposed Administrative Rule **TRANS 117**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 05-034

Dear Senator Leibham and Representative Ainsworth:

In accordance with the Department of Transportation's efforts to keep you informed of its ongoing rule making actions, enclosed is a courtesy copy of Final Draft rule **Trans 117**, relating to **CDL occupational licenses**, which is being submitted to the Legislature for committee review.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".
Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Lynne B. Judd
Erin Egan

CR 05-034

The Wisconsin Department of Transportation proposes an order to repeal TRANS 117.02(2)(c) and (d), 117.03(2)(e) and (L), (3)(c), (h) and (i), 117.05(4)(d), 117.08(1) to (4) and 117.09(3); amend TRANS 117.025(8), 117.03(2)(f) and (k), (3)(f) and (5)(a)1., 117.05(5), 117.08(5); and create TRANS 117.03(3)(g)(note), relating to CDL occupational licenses

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

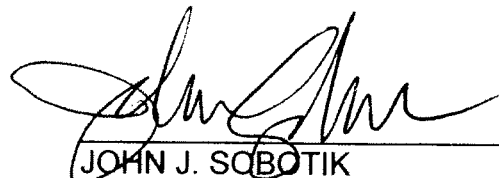
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



JOHN J. SOBOTIK
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 267-9320

PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 343.10, Stats.

Statutory authority: s. 343.10, Stats.

Explanation of agency authority: The Department is authorized to issue occupational licenses under s. 343.10, Stats., to allow a person whose operating privileges are suspended or revoked to engage in an occupation, homemaking or study. Only licenses revoked under Chapter 343, ss. 767.303, 938.34(14q), 943.21(3m) or 961.50, Stats., are eligible for an occupational license.

Related statute or rule: Chapter 343, ss. 767.303, 938.34(14q), 943.21(3m) and 961.50, Stats.

Plain Language Analysis: This proposed rule modifies ch. Trans 117, relating to occupational licenses. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) forbids states from knowingly issuing a temporary license permitting a person to drive a commercial motor vehicle (CMV) while their driving privileges are revoked, suspended or cancelled, per CFR 384.210. Following federal requirements, the legislature eliminated statutory authority for CDL occupational licenses, effective September 30, 2005, by amendment to s. 343.10(2)(c), Stats., 2003 Wis. Act 33. These amendments to ch. Trans 117 as required by the statutory change, remove all of the references to commercial occupational driver's licenses in the Department's occupational licensing rule.

References to s. 346.65(6), Stats., throughout the chapter are no longer correct. The language allowing the courts authority to order an ignition interlock device is now found in s. 343.301(1), Stats. The relevant provisions of ch. Trans 117 are proposed to be amended accordingly. The rule also makes clear that any statutorily-mandated restriction will be imposed on any occupational license.

The requirement that a person surrenders all other license documents or certify they are lost is being repealed. In practice, the Department does not get these from most drivers even if requesting them.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: As of September 30, 2005, federal law prohibits states from issuing an occupational license to operate a commercial motor vehicle. (49 CFR 384.210) 2003 Wis. Act 33 and this rule making bring Wisconsin into compliance with that requirement.

Comparison with Rules in Adjacent States: As of September 30, 2005 all states are prohibited from issuing an occupational license to operate a commercial motor vehicle. (49 CFR 384.210). This includes all adjacent states. Thus, Wisconsin law will be identical to all other states on this point. No state will issue CDL occupational licenses.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: The Department will not issue occupational licenses to operate a commercial motor vehicle after September 30, 2005 (s. 343.10(2)(c), as amended by 2003 Wis. Act 33). Failure to comply would result in the loss of federal highway funding.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: This proposed rule could impact small businesses that employ commercial drivers. Any commercial driver who loses his or her driving privileges may be eligible for a Class D occupational license, however, they will not be able to operate a commercial motor vehicle. In 2004, the Department issued 1,088 occupational licenses for commercial drivers. None of these drivers can be issued or hold an occupational license after September 30, 2005.

If a driver cannot operate a commercial motor vehicle, and it is part of their job duties to do so, the employee must be reassigned to duties that do not require the operation of a commercial motor vehicle. As an alternative, the small business may choose to terminate the employee for being unable to perform his or her job duties and hire someone else with a valid commercial driver's license.

The Department will enforce the rule by not issuing occupational licenses to operate commercial motor vehicles after September 30, 2005.

Agency contact person: You may contact the Department's small business regulatory coordinator, Reggie Newson, by phone at (608) 264-6669, or via e-mail at reggie.newson@dot.state.wi.us.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: Small businesses might be adversely affected if the number of qualified, available drivers under MCSIA is reduced. Employers may find that they have to pay drivers a premium wage in order to continue to provide their current level of service.

The National Compensation Survey of Milwaukee-Racine, conducted in October 2003, found that transportation and material moving employees (includes truck drivers and industrial truck and tractor equipment operators) earned an average of \$18.00 per hour. If 10% premium were applied to retain qualified, available drivers under MCSIA, this would cost a small business an additional \$3744 per year. $18.00 * 10\% = 1.80 * 2080 \text{ hours} = \3744

The predicted fiscal impacts of the federal regulation, which imposed these new requirements upon states, were published in the Federal Register at Volume 67, No. 147, July 31, 2002, p. 49472. This federal register is available online at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-18457-filed.pdf.

Copies of Proposed Rule: Copies of the proposed rule may be obtained, without cost, by writing to Erin Egan, Department of Transportation, Division of Motor Vehicles, Bureau of Driver Services, Room 351 Hill Farms, P.O. Box 7920, Madison WI 53707-7920. You may also contact Ms. Egan by phone at (608) 266-1449, or via e-mail at erin.egan@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 117.02(2)(c) and (d) are repealed.

SECTION 2. Trans 117.025(8) is amended to read:

Trans 117.025(8) If a petition is granted by the court, the department shall receive the court's order and treat it and the appellant's petition to the court as an application for occupational license. The department shall issue an occupational license to the person, subject to any restrictions ordered by the court or required under s. Trans 117.03(3), unless issuance of an occupational license to the person is prohibited under s. Trans 117.03(2). ~~If the person is ineligible for a CDL occupational license but is eligible for a class D or M license, the department may issue a class D or M license to the person, but may not authorize privileges to operate class A, B or C vehicles on the license.~~

SECTION 3. Trans 117.03(2)(e) is repealed.

SECTION 4. Trans 117.03(2)(f) and (k) are amended to read:

Trans 117.03(2)(f) The person has installed any ignition interlock devices the person has been ordered to install as a condition of an occupational license or pursuant to a court order under s. ~~346.65(6)~~ 343.301(1), Stats.

(k) The person has not filed more than one petition with a circuit court for an occupational license since the last date on which the department issued ~~a basic, commercial or an~~ occupational license to the person.

SECTION 5. Trans 117.03(2)(L) and (3)(c) are repealed.

SECTION 6. Trans 117.03(3)(f) is amended to read:

Trans 117.03(3)(f) No occupational license may authorize the operation of a school bus or commercial motor vehicle.

NOTE: ss. 343.10(2)(c) and 343.10(5)(a)1.

SECTION 7. Trans 117.03(3)(g)(note) is created to read:

Trans 117.03(g)(note) Note: ss. 343.10(1)(a) and (5)(a)1.

SECTION 8. Trans 117.03(h) and (i) are repealed.

SECTION 9. Trans 117.03(5)(a)1. is amended to read:

Trans 117.03(5)(a)1. The person is convicted of an offense for which an ignition interlock is ordered to be imposed on the person's vehicle under s. ~~346.65(6)~~ 343.301(1), Stats.

SECTION 10. Trans 117.05(4)(d) is repealed.

SECTION 11. Trans 117.05(5) is amended to read:

Trans 117.05(5) An application for occupational license submitted by a person who has been ordered to install an ignition interlock device ~~as part of a criminal sentence~~ under s. ~~346.65(6)~~ 343.301(1), Stats., shall include a copy of the order and proof of installation.

SECTION 12. Trans 117.08(1) to (4) are repealed.

SECTION 13. Trans 117.08(5) is amended to read:

Trans 117.08(5) ~~Notwithstanding subs. (1) to (4) or any expiration date stated on the face of an occupational license, an~~ An occupational license shall expire 2 working days after the end of all suspensions and revocations of the driver's operating privilege in effect at the time the occupational license was issued.

SECTION 14. Trans 117.09(3) is repealed.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this 9th day of June, 2005.



FRANK J. BUSALACCHI

Secretary

Wisconsin Department of Transportation



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

PART 3 CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **05-034**

AN ORDER to repeal Trans 117.02 (2) (c) and (d), 117.03 (2) (e) and (L) and (3) (b), (c), (h) and (i), 117.05 (4) (d), 117.08 (1) to (4) and 117.09 (3); to amend Trans 117.025 (8), 117.03 (2) (f) and (k), (3) (f) and (5) (a) 1., 117.05 (5) and 117.08 (5); and to create Trans 117.03 (3) (g) (note), relating to CDL occupational licenses.

Submitted by **DEPARTMENT OF TRANSPORTATION**

04-22-2005 RECEIVED BY LEGISLATIVE COUNCIL.

05-17-2005 REPORT SENT TO AGENCY.

RNS:DLS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☐

NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☐

NO ☒

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 05-034

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

The repeal of s. Trans 117.03 (2) (e) and (3) (b) do not appear to be related to the elimination of the commercial drivers license (CDL)-occupational. Therefore, the repeal of these provisions should be explained in the plain language analysis.

4. Adequacy of References to Related Statutes, Rules and Forms

The department should examine rules that are outside of ch. Trans 117 to see if they need to be amended because of the elimination of CDLs-occupational. For example, see ss. Trans 100.18 and 102.20 (9).

PART 4
CR 05-034

ANALYSIS OF FINAL DRAFT OF TRANS 117

(a) **Basis and Purpose of Rule.** The Motor Carrier Safety Improvement Act of 1999 (MCSIA) forbids states from knowingly issuing a temporary license permitting a person to drive a commercial motor vehicle (CMV) while their driving privileges are revoked, suspended or cancelled, per CFR 384.210. Following federal requirements, the legislature eliminated statutory authority for CDL occupational licenses, effective September 30, 2005, by amendment to s. 343.10(2)(c), Stats., 2003 Wis. Act 33. These amendments to ch. Trans 117 as required by the statutory change, remove all of the references to commercial occupational driver's licenses in the Department's occupational licensing rule.

References to s. 346.65(6), Stats., throughout the chapter are no longer correct. The language allowing the courts authority to order an ignition interlock device is now found in s. 343.301(1), Stats. The relevant provisions of ch. Trans 117 are proposed to be amended accordingly. The rule also makes clear that any statutorily-mandated restriction will be imposed on any occupational license.

The requirement that a person surrenders all other license documents or certify they are lost is being repealed. In practice, the Department does not get these from most drivers even if requesting them.

(b) **Modifications as a Result of Testimony at Public Hearing.** The hearing was held in Madison on May 26, 2005. No modifications were made to the proposed rule as a result of testimony at the hearing. Modifications made as a result of Legislative Council comments are discussed below.

(c) **List of Persons who Appeared or Registered at Public Hearing.** No one appeared or registered at the hearing.

(d) **Summary of Public Comments and Agency Response to those Comments:** No public comments were received.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** The plain language analysis has been amended in response to a Legislative Council comment under 2. Form, Style and Placement in Administrative Code. See explanation below.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained two comments. They are addressed as follows:

2. Form, Style and Placement in Administrative Code.

An analysis of the repeal of s. Trans 117.03(2)(e) has been added to the plain language analysis. Sub. (3)(b) will not be repealed because it is possible for a Class D license to carry a "P" endorsement. Drivers who did not hold such an endorsement before having their operating privilege suspended or revoked are and should be barred from obtaining the endorsement while operating on an occupational license. s. 343.10(2)(b), Stats.

4. Adequacy of References to Related Statutes, Rules and Forms.

Section Trans 100.18 is proposed to be repealed and recreated in CR 01-156. Section Trans 102.20(9) is consistent with this rule making. The Department has issued a statement of scope for rule making that will examine the farm service waiver described in s. Trans 102.20. The Department can repeal the provision as part of that rule making.

(g) **Final Regulatory Flexibility Analysis.** This proposed rule could impact small businesses that employ commercial drivers. Any commercial driver who loses his or her driving privileges may be eligible for a Class D occupational license, however, they will not be able operate a commercial motor vehicle. In 2004, the Department issued 1,088 occupational licenses for commercial drivers. None of these drivers can be issued or hold an occupational license after September 30, 2005.

If a driver cannot operate a commercial motor vehicle, and it is part of their job duties to do so, the employee must be reassigned to duties that do not require the operation of a commercial motor vehicle. As an alternative, the small business may choose to terminate the employee for being unable to perform his or her job duties and hire someone else with a valid commercial driver's license.